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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,030	01/16/2004	Richard L. Borders	8266-1153	8500

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EXAMINER


SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/760,030	Applicant(s) BORDERS ET AL. 	
	Examiner Robert G. Santos	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 32-40 is/are pending in the application.
4a) Of the above claim(s) 20,24,28-30,34 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,13-19,21-23,25-27,32,33,35,36 and 38 is/are rejected.
- 7) ☒ Claim(s) 11,12,39 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 20, 24, 28-30, 34 and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 5, 2004.

Claim Objections

2. Claims 21, 25-27, 33, 35, 36 and 38-40 are objected to because of the following informalities:

- 1) In claim 21, lines 10 and 11: The term "overlay" should be changed to --extender--.
 - 2) Claims 25-27, 33, 35, 36 and 38-40 contain exactly the same limitations as recited in claims 1, 3-7 and 10-12, respectively.
- Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-4 and 25-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,377,370 to Foster et al. (note especially Figures 1-4; column 1, lines 18-49; column 2, lines 10-28; column 3, lines 15-68; and column 4, lines 1-24).

5. Claims 5-10, 13, 21, 22, 33, 35, 36 and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Adams '065 (note especially Figures 3, 4 & 6-9; column 2, lines 30-38; column 5, lines 44-67; and column 6, lines 1-21).

6. Claims 14-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pennington et al. '078 (note especially Figures 29-32; column 2, lines 6-14; column 13, lines 43-67; and column 14, lines 1-40).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pennington et al. '078. Pennington et al. are considered to show all of the limitations as recited in claims 21-23 except for a condition wherein the upper surface of the extender provides a width dimension "about 25% to about 50% greater." It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the patient support of Pennington et al. '078

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with an extender providing a width dimension “about 25% to about 50% greater”, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. ‘370. Foster et al. do not specifically disclose a condition wherein the mattress includes a plurality of mattress sections. It would have been obvious at the time the invention was made to form the mattress of Foster et al. ‘370 as a plurality of mattress sections, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Allowable Subject Matter

10. Claims 11, 12, 39 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

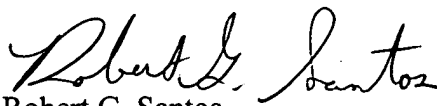
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Borders et al. ‘904, Borders et al. ‘908, Wong ‘415, Wong ‘513, Wong ‘609, Borders et al. ‘971, Foster et al.’ 744, Foster et al. ‘332, Foster et al. ‘843, Waters et al. ‘136, Johansson ‘626 and Slivoski ‘328.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
October 29, 2004